

in regard to the use of a market, although no * toll can be charged for any goods brought into it; yet, to avoid confusion, if any one desires to have for himself the convenience of a particular stall; the owners of the market may lawfully charge toll for such a peculiar accommodation. *The Mayor of Northampton v. Ward*, 1 Wils. 114. **382**

Whence it is clear, that The Mayor and City Council of Baltimore, who are the successors of the commissioners of Baltimore Town, 1796, ch. 68, can have no right whatever to charge wharfrage for the use of these wharves, although they are the owners of the soil; because no such right has been reserved or given to them in the grant by which they make title to the property; or has been reserved by the owner thereof at the time of its dedication to the use of the public; and further, because it is strongly to be inferred from the manner in which the grant itself speaks of a public wharf, that the right to collect tolls was intentionally withheld; and moreover, because these are public wharves, and the right to charge wharfrage for the use of all such wharves, is expressly prohibited by a late Act of Assembly, which leaves them free for the use of all, and like the public streets, to be repaired at the common expense of the city. 1813, ch. 118; *Ex parte Vennor*, 3 Atk. 772.

It is laid down in general terms, as well in regard to a wharf as a highway, that where an individual citizen is clearly under an * obligation to maintain and keep it in repair, he may charge a reasonable toll as a means of enabling him to discharge **383**

Town, into the harbor or basin of said town, inasmuch as it is expressly provided by the Act of Assembly of this State, entitled an Act appointing wardens for the port of Baltimore Town in Baltimore County, that no wharf shall be extended so as to obstruct the said harbor or basin; and inasmuch as in the opinion of this Court no private person had or hath a right to extend a public street, or any part thereof into the said harbor or basin; and the said wardens are only empowered, as this Court conceives, by the said Act, so far as it respects the extension of wharves, to give permission for extension of wharves to persons, who, independent of the said Act have a right by law to extend ground or wharves into the waters of the said harbor, or rather, are only empowered to limit the extension of the ground or wharves of such persons.

Thereupon it is Decreed, that the said defendants and each of them, be and they and their ministers, agents and servants, hereby are absolutely and perpetually enjoined to desist and surcease from injuring or obstructing the free navigation of the north-west branch of Patapsco River to and from Calvert street in Baltimore Town in Baltimore County aforesaid, and the public wharf at the south end of the said Calvert street, by putting earth, stone, timber, or other obstructions in the water of the said river in front of the said street and wharf, and within that space of water of the said north-west branch of Patapsco River, which is and will be included in and by the lines of the east and west sides of Calvert street aforesaid, being run and extended into the said north-west branch of Patapsco River to the channel thereof.—*Chancery Proceedings, lib. S. H. H. letter B, fol. 17.*